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JUN 16 1997

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

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U.S.D.C. - ROME

By:

LUTHER D. THOMAS, Clerk

Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

VELSICOL CHEMICAL CORPORATION,

Defendant.

DR

OCT 7 - 1997

LUTHER D. THOMAS, Clerk

By:

Deputy Clerk

CIVIL ACTION NO.  
4:94-CV-258-HLM

Shavers Farm

CONSENT DECREE

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## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter for recovery of response costs and for declaratory relief pursuant to Sections 107 and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9607 and 9613(g). The United States seeks recovery of response costs incurred or to be incurred by the United States in response to the release or threat of release of hazardous substances at or from a facility known as the Shaver's Farm Superfund Site in Walker County, Georgia.

B. The release or threatened release of hazardous substances at or from the Shaver's Farm Superfund Site has caused the United States to incur response costs, including, but not limited to, costs relating to sampling and other investigations, excavation of contaminated soil and drums and costs of temporarily storing contaminated materials prior to off-site disposal.

C. The United States and Velsicol Chemical Corporation ("Defendant") agree and this Court, by entering this Decree, finds that settlement of this matter will avoid prolonged and complicated litigation and that this Consent Decree, without being an admission of liability, is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## II. JURISDICTION

D. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over Defendant Velsicol Chemical Corporation. Solely for the purposes of this Consent Decree, Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District and will not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

E. This Consent Decree is binding upon the United States and upon Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Defendant under this Consent Decree.

## IV. DEFINITIONS

F. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree the following definitions shall apply:

1. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

2. "Consent Decree" shall mean this consent decree.

3. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.

4. "Defendant" shall mean Velsicol Chemical Corporation.

5. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

6. The "EPA Removal" shall mean the removal action conducted by EPA in connection with Shaver's Farm I.

7. "Future Site Assessment Costs" shall mean all costs incurred by EPA in connection with Site Assessment activities relating to the Site, including Shaver's Farm I, Shaver's Farm II and Shaver's Farm III after December 17, 1996.

8. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26 of the U.S. Code, in accordance with 42 U.S.C. § 9607(a), compounded (at EPA's option) on a daily, monthly or annual basis.

9. "National Contingency Plan" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at

40 C.F.R. Part 300, including but not limited to any amendments thereto.

10. "Outstanding AOC Oversight Costs" shall mean those costs incurred by EPA in connection with oversight of the Velsicol Removal. Pursuant to the terms of the AOC, Velsicol has agreed, subject to dispute resolution, to pay the Outstanding AOC Oversight Costs once EPA submits a bill for said costs. The Outstanding AOC Oversight Costs are estimated to be \$212,000.

11. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

12. "Parties" shall mean the United States and Defendant Velsicol Chemical Corporation.

13. "Past Removal Costs" shall mean all costs incurred by EPA in connection with the EPA Removal and the Velsicol Removal as of December 17, 1996.

14. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs that EPA and the U.S. Department of Justice on behalf of EPA have incurred and paid through December 17, 1996 in connection with the Site, including Past Site Assessment Costs, plus interest on all such costs. As of December 17, 1996, EPA has incurred at least \$7,330,000 in response costs and \$1,418,000 in Interest, for a total of at least \$8,748,000 in Past Response Costs.

15. "Past Site Assessment Costs" shall mean all costs incurred by EPA in connection with Site Assessment activities relating to the Site as of December 17, 1996, including Shaver's

Farm I Past Site Assessment Costs, Shaver's Farm II Past Site Assessment Costs and Shaver's Farm III Past Site Assessment Costs. Past Site Assessment Costs do not include Past Removal Costs. The parties agree and stipulate that Past Site Assessment Costs are \$996,000.

16. "Pre-EPA Removal Haztech Costs" shall mean the costs incurred by Haztech prior to the EPA Removal, not including Interest. Pre-Removal Haztech Costs total \$148,000.

17. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

18. "Shaver's Farm I Past Site Assessment Costs" shall mean all costs, incurred by EPA in connection with Site Assessment activities relating to Shaver's Farm I as of December 17, 1996.

19. "Shaver's Farm II Past Site Assessment Costs" shall mean all costs incurred by EPA in connection with Site Assessment activities relating to Shaver's Farm II as of December 17, 1996. The Parties agree and stipulate that of the Past Site Assessment Costs, the amount attributable to Shaver's Farm II is \$332,000.

20. "Shaver's Farm III Past Site Assessment Costs" shall mean all costs incurred by EPA in connection with Site Assessment activities relating to Shaver's Farm III as of December 17, 1996.

21. "Site" shall mean the CERCLA facility designated by the United States Environmental Protection Agency as the Shaver's Farm Site, in Walker County, Georgia. The Site includes three noncontiguous areas: Shaver's Farm I, Shaver's Farm II and

Shaver's Farm III, the approximate locations of which are depicted on Exhibit 1 attached hereto.

22. "Site Assessment" shall mean the Site Assessment activities EPA has conducted in connection with possible listing of the Site on the National Priorities List, including with respect to Shaver's Farm I, Shaver's Farm II and Shaver's Farm III.

23. "United States" shall mean the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice acting on behalf of the EPA.

24. The "Velsicol Removal" shall mean the removal action conducted by Velsicol pursuant to the Administrative Order on Consent for Removal Action, CERCLA Docket No. 95-4-C, executed on October 27, 1994 (the "AOC") in connection with Shaver's Farm I.

#### **V. REIMBURSEMENT OF RESPONSE COSTS**

##### **G. Payment of Past Response Costs to the United States.**

Defendant shall pay to the United States a total of \$6,280,560 in Past Response Costs in three installments plus Interest, as follows. Within 90 days of entry of this Consent Decree, Defendant shall pay to the United States \$2,093,520, plus Interest from December 17, 1996 to the date of payment. Twelve months after the first payment, Defendant shall pay \$2,093,520 plus Interest accrued on the remaining balance after the first payment. Twelve months after the second payment, Defendant shall pay \$2,093,520 plus Interest accrued on the remaining balance



after the second payment. Each payment shall be by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the CERCLA Number (04M5) and the U.S.A.O. file number (94-01964). Payment shall be made in accordance with instructions provided by the Plaintiff to the Defendant upon execution of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

**VI. FAILURE TO MAKE TIMELY PAYMENTS**

H. Interest on Late Payments. In the event that any payments required by this Consent Decree are not made when due, Interest shall continue to accrue on the unpaid balance, through the date of payment.

I. If the United States brings an action or files a motion to enforce an obligation or collect any payment determined to have been required by this Consent Decree, then Defendant shall reimburse the United States for all costs of such action or motion, including but not limited to costs of attorney time.

J. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Defendant's failure to make timely payments required by this Consent Decree.

**VII. COVENANTS NOT TO SUE BY PLAINTIFF**

K. Covenant Not to Sue. Except as specifically provided herein, the United States covenants not to sue Defendant under Section 107 of CERCLA to recover Past Response Costs as defined

under this Consent Decree. This covenant not to sue extends only to Defendant and does not extend to any other person. This covenant not to sue shall take effect upon receipt by the United States of the \$6,280,560 in payment for Past Response Costs required under this Consent Decree.

L. Reservation of Rights

1. General. The covenant not to sue set forth in the preceding Paragraph does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendant with respect to all other matters. Except as provided in the preceding Paragraph, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision of law, against Defendant or against any other person or entity not a party to this Decree.

2. Specific reservations. The covenant not to sue set forth herein does not apply, inter alia, to the following:

- (a) claims based upon failure of Defendant to meet the requirements of this Consent Decree;
- (b) claims for damages to natural resources, as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6);

(c) claims for costs incurred by any natural resources trustees;

(d) claims based upon criminal liability;

(e) claims for response costs incurred by any federal agencies other than those specified within the definition of "United States" in this Consent Decree, except to the extent that EPA has paid for such costs as part of Past Response Costs;

(f) claims for injunctive relief or administrative order enforcement under Section 106 of CERCLA;

(g) claims for costs incurred or to be incurred by the United States in connection with the Site that are not within the definition of Past Response Costs set forth herein;

(h) claims pursuant to the AOC for Outstanding AOC Oversight Costs as defined herein; Velsicol shall address such costs, subject to dispute resolution, pursuant to the terms of the Administrative Order;

(i) claims for Shaver's Farm I Past Site Assessment Costs and Shaver's Farm III Past Site Assessment Costs, provided that the Shaver's Farm Site is first listed, after exhaustion of all rights of appeal, on the National Priorities List. If either or both Shaver's Farm I and Shaver's Farm III are listed on the National Priorities List separately from Shaver's Farm II, after

exhaustion of all rights of appeal, then the United States may seek recovery from Defendant of Past Site Assessment Costs relating to that portion of the Shaver's Farm Site which is listed, including Interest after a demand therefor has been made, except that the United States will not seek recovery from Defendant with respect to Shaver's Farm II Past Site Assessment Costs. In the event that an issue arises in any future litigation between the Parties with respect to the allocation of Past Site Assessment Costs between Shaver's Farm I Past Site Assessment Costs and Shaver's Farm III Past Site Assessment Costs, then the Parties may attempt to allocate the amounts of such costs, but if neither Party is able to allocate the amount of such costs to the satisfaction of the trier of fact, then the allocation between the Shaver's Farm I Past Site Assessment Costs and Shaver's Farm III Past Site Assessment Costs shall be equal. Velsicol reserves its rights to raise any and all defenses to any claim for Past Site Assessment Costs, including to Shaver's Farm I Past Site Assessment Costs and Shaver's Farm III Past Site Assessment Costs, except as to the allocation of the amounts of Shaver's Farm I Past Site Assessment Costs and Shaver's Farm III Past Site Assessment Costs pursuant to the procedure specified herein; and

(k) claims for Future Site Assessment Costs.

#### VIII. COVENANTS BY DEFENDANT

M. Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### IX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

N. Except as otherwise provided herein, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree.

O. With regard to claims for contribution against Defendant for matters addressed in this Consent Decree, the Parties hereto agree that Defendant is entitled to such protection from contribution actions or claims as is provided by

CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). The matters addressed in this settlement are all Past Response Costs.

P. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in herein.

#### **X. NOTICES AND SUBMISSIONS**

Q. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

Re: 90-112-886

As to EPA:

Simon A. Miller  
Associate Regional Counsel  
Environmental Protection Agency, Region IV  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-3104

As to Defendant:

Patricia Barmeyer, Esq.  
King & Spalding  
191 Peachtree Street  
Atlanta, Georgia 30303-1763

George R. Harvell  
Memphis Environmental Center  
2603 Corporate Avenue  
Suite 100  
Memphis, TN 38132

**XI. RETENTION OF JURISDICTION**

R. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

**XII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

S. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree

is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

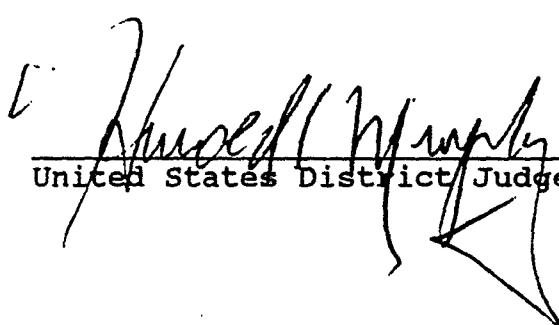
T. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

**XIII. SIGNATORIES/SERVICE**

U. The undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

SO ORDERED, this 3<sup>rd</sup> day of October,

1997.


  
United States District Judge



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Velsicol Chemical Corp., No. 4:94-CV-258-HLM, relating to the Shaver's Farm Superfund Site in Walker County, Georgia.

UNITED STATES OF AMERICA

Date: 6/12/97



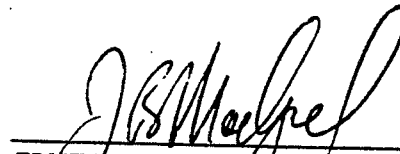
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Deputy Section Chief

Environmental Enforcement Section

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United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
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JAMES R. MacAYEAL

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Region IV  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-3104

Date: 19 MAY 97



RICHARD D. GREEN  
Director (Acting)  
Waste Management Division  
U.S. Environmental Protection  
Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-3104

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Velsicol Chemical Corp., No. 4:94-CV-258-HLM relating to the Shaver's Farm Superfund Site in Walker County, Georgia.

DEFENDANT Velsicol Chemical Corp.

Date: 5-5-97

By: CR Hanson.

Name: Charles R. Hanson

Title: Vice President EHS

CAD DWG NO: SHV-FARMS  
 DATE: 03-17-94 CUS  
 PLOT SCALE: 1=1  
 ORIGINAL DWG SIZE: 8.5 x 11

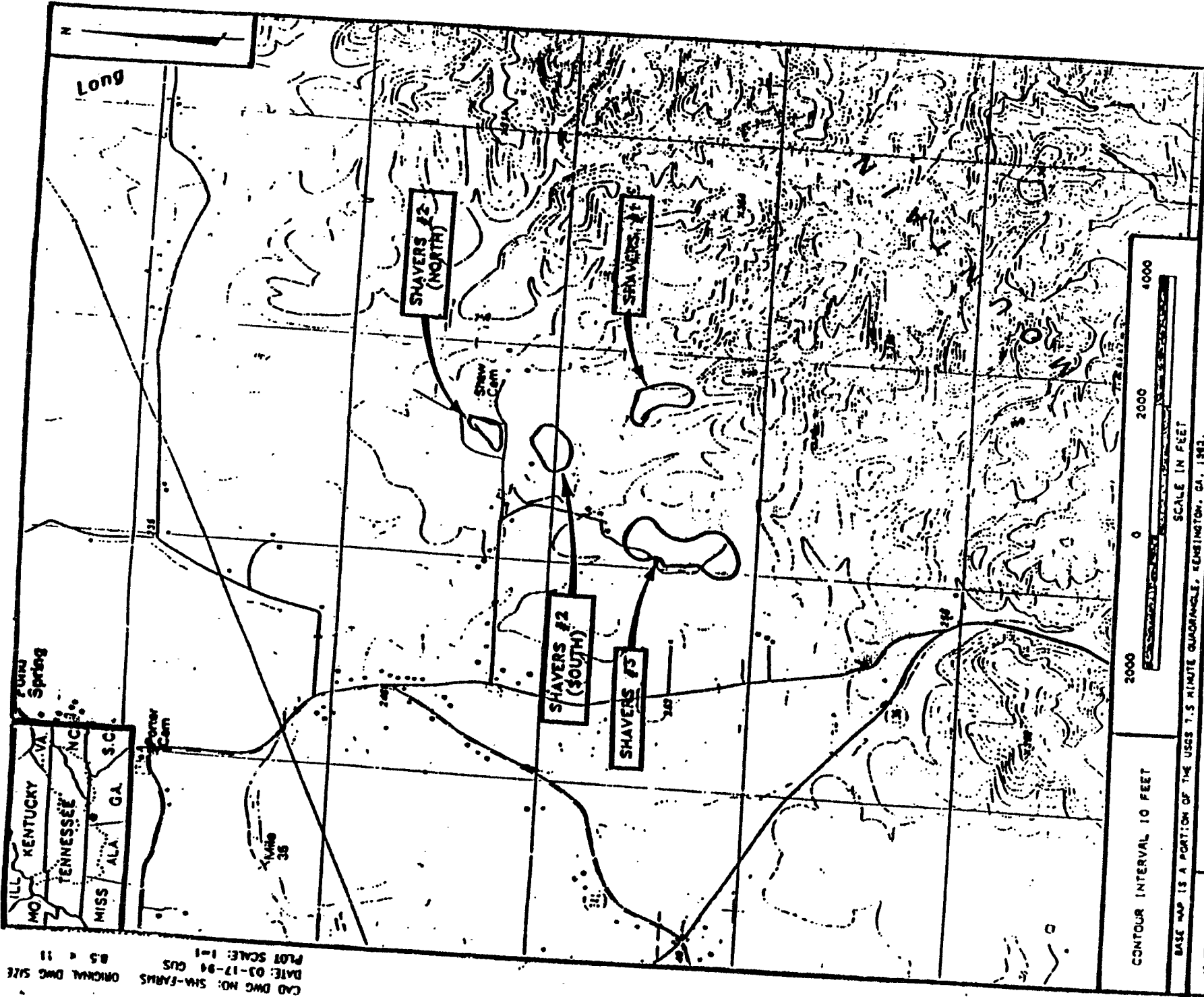


EXHIBIT  
 1

SITE LOCATION MAP  
 SHIVERS FARM  
 LAFAYETTE, WAIKED COUNTY, GEORGIA